

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

BRICKSTOP CORPORATION,)	
)	
Plaintiff,)	Case No. 08-CV-2690
)	
v.)	Honorable Judge Gettleman
)	
VALLEY VIEW INDUSTRIES, H.C., INC.,)	Magistrate Judge Cole
)	
Defendant.)	

DEFENDANT’S MOTION TO STRIKE

Defendant, Valley View Industries, H.C., Inc. (“Valley View”), by its attorneys, hereby requests that this Court strike portions of the affidavits submitted by Plaintiff BrickStop Corporation (“BrickStop”) in support of its Motion for Preliminary Injunction (“Motion”):

1. On June 6, 2008, Plaintiff BrickStop Corporation (“BrickStop”) filed its Motion and supporting materials. (Docket Nos. 12-14, 21.)
2. BrickStop submitted the declaration of James Brown in support of its Motion. Paragraphs 4-10 of that declaration contain hearsay statements concerning conversations with and statements made by third parties.
3. BrickStop submitted the declaration of Joel Hutchinson in support of its Motion. Paragraphs 4-6 of that declaration contain hearsay statements concerning conversations with and statements made by third parties.
4. BrickStop submitted the declaration of David Frieberg in support of its Motion. Paragraph 20 of that declaration contain hearsay statements concerning conversations with and statements made by third parties.

5. BrickStop submitted the declaration of Al Train in support of its Motion. Paragraph 6 of that declaration contain hearsay statements concerning conversations with and statements by third parties.

6. BrickStop submitted the declaration of Gary Wein in support of its Motion. Paragraph 9 of that declaration contain hearsay statements concerning conversations with and statements made by third parties.

7. Because the paragraphs identified above contain “statement[s] other than [those] made by the declarant ... offered in evidence to prove the truth of the matter asserted,” they constitute hearsay under Fed. R. Evid. 801(c).

8. Under Fed. R. Evid. 802, such hearsay statements are inadmissible.

9. BrickStop has not established that any exceptions to the hearsay rule of Fed. R. Evid. 802 apply to these statements.

10. Accordingly, these statements represent inadmissible hearsay and should not be considered by the Court when deciding the Motion.

WHEREFORE, Valley View respectfully requests that this Court:

- A. Strike the hearsay statements identified above;
- B. Disregard any arguments made by BrickStop in support of its Motion which rely upon the stricken statements; and,
- C. Grant any further relief that the Court deems proper and equitable.

Dated: August 8, 2008

Respectfully, submitted,

VALLEY VIEW INDUSTRIES, H.C., INC.

By: /s/ Monica L. Thompson
One of its Attorneys

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CERTIFICATE OF SERVICE

I, Monica L. Thompson, an attorney, depose and state that on August 8, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will serve electronic notice to all counsel of record.

By: /s/ Monica L. Thompson

Monica L. Thompson